



January 30, 2004

Ms. Jennifer J. Johnson  
Secretary

**Via E-Mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Docket No. R-1167, R-1168, R-1169, R-1170, R-1171;  
FR Vol. 67, No. 32, Page 7252  
Proposed revisions to Regulations Z, B, E, M and DD

Dear Ms. Johnson:

On behalf of USAA Federal Savings Bank, a wholly-owned, indirect subsidiary of USAA, we provide the following comments on the proposed revisions to Regulations Z, B, E, M and DD as published in the November 26, 2003 Federal Register.

USAA is a reciprocal interinsurance exchange that provides property and casualty insurance products to members of the U.S. military services, and their families. USAA Federal Savings Bank is a federally chartered savings association with consolidated total assets exceeding \$16 billion and total deposits exceeding \$10.8 billion, as of year-end 2003.

### **Comments on the Proposed Revisions to Regulations Z, B, E, M and DD**

#### **Inclusion of a "clear and conspicuous" standard in Regulations Z, B, E, M and DD.**

Bringing consistent standards to all regulations and assuring consumers "receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services" are worthwhile goals. However, as noted in the proposal itself, the proposed revisions do not respond to alleged problems or misdeeds relating to ensuring consumers are properly informed by the well established disclosures required by Regulations Z, B, E, M and DD (the "effected Regulations") that have come to the attention of the Federal Reserve. We urge the Federal Reserve to not make the proposed significant changes to the well established "clear and conspicuous" standards stated in the effected Regulations without some compelling evidence of the necessity of such a step.

We believe adoption of the proposed new standard to the effected Regulations will add new and unnecessary uncertainty to its interpretation and application. We also believe adoption of the proposed new standard has the potential to significantly increase financial institution compliance costs without any offsetting benefit to consumers or to the institutions themselves.

The proposed new standard invites a subjective determination of whether disclosures are “reasonably understandable” and “designed to call attention to their nature and significance.” For this reason, we expect adoption of the proposed new standard will increase significantly litigation costs incurred by financial institutions and their customers. The proposed new standard also would require Agency examiners to make subjective judgments, resulting in both compliance uncertainty and additional increased costs for financial institutions.

The proposal uses as a model the “clear and conspicuous” standard stated in Regulation P, which implements the privacy requirements of Title V of the Gramm-Leach-Bliley Act. Regulation P requires financial institutions to provide initial and annual notices of institution privacy practices and procedures. The notice requirements of Regulation P currently are the subject of an advanced notice of proposed rulemaking by the federal banking regulators, the NCUA, the FTC, the CFTC and the SEC. The ANPR is an effort to address concerns that the privacy notices issued in compliance with Regulation P are too lengthy, too complex and not helpful to consumers seeking to compare the privacy policies of various financial institutions.

We do not believe that Regulation P’s “clear and conspicuous” standard should be used as the standard in the consumer protection regulations listed in the proposed rule. At a minimum, consideration of adoption of the Regulation P standard in other regulations should be delayed until after any revisions of the Regulation P privacy notice requirements have been implemented and have had a period of time of practical use by the financial services industry.

The Regulation P notice of privacy policies and procedures is a relatively “static” disclosure, in the sense that it is an initial and annual statement of institution policy and practice. The disclosure does not vary depending upon the type, or the terms and conditions of, a particular transaction between and institution and its customer. The disclosures required by the effected Regulations are very often transaction specific. While Regulation P’s “clear and conspicuous” standard does permit appropriate flexibility in the form and content of the required privacy notice, we believe it is not workable as a standard for the wide variety of transaction specific disclosures mandated by the effected Regulations. As an example, Regulation P states that “clear and conspicuous” means, in part, a disclosure “designed to call attention to the nature and significance of the information in the disclosure.” We question how this requirement would be efficiently and effectively satisfied by a creditor attempting to disclose the amount financed, the finance charge, the annual percentage rate and the other disclosures required by Regulation Z in connection with any loan transaction.

Violations of Regulation P requirements are not subject to private rights of action. However, many requirements of the effected Regulations, if violated, are subject to private rights of action. We are concerned that compliance uncertainty and subjectivity created by adoption of the Regulation P clear and conspicuous standard as the standard for the effected Regulations will lead to litigation, resulting in increased risk and costs for providing financial

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services products. Obviously, adoption of the new standard would force institutions to revise and reprint a vast amount of product documentation, also resulting in increased costs. Again, if significant changes in the standard were needed to address an obvious failure of the existing standards, the increased risk and costs might be justified. In the current situation, we do not believe the benefits of adopting the proposed new standard outweigh the anticipated cost.

We appreciate the opportunity to participate in the regulatory process, and in particular, your willingness to receive suggestions to reduce the regulatory burden, while still meeting the objective of the consumer protection provisions of the effected Regulations. If you have any questions about the above material, you may contact me at (210) 498-7479, or via email at michael.broker@usaa.com.

Very truly yours,

USAA FEDERAL SAVINGS BANK

//s// Michael J. Broker

Michael J. Broker  
Vice President  
Banking Counsel